

From: grish.org
To: Gloria-Small.Moran/R6/USEPA/US@EPA
Cc: Casey.Luckett/R6/USEPA/US@EPA; Carlos.Sanchez/R6/USEPA/US@EPA; Donald.Williams/R6/USEPA/US@EPA; grish.org
Subject: Arkwood Revitalization: Grisham Jr. Comments on McKesson Communications & Grisham Jr. Request for Clarification
Date: 11/16/2011 02:42 PM
Attachments: [doc20111027102833.pdf](#)
[Arkwood Site Agreement.pdf](#)
[100326MescherDeedRestrct.pdf](#)

Dear Ms. Moran,

I write regarding McKesson Corporation attorney Don A. Smith's letter dated October 26, 2011 and certain of its attachments as sent to Region 6 Superfund Chief Carlos A. Sanchez (attached).

I wish to provide you with the "Site Agreement" (attached) referred to as "Exhibit '2'" in the "Settlement Agreement" Mr. Smith attached in his letter to Mr. Sanchez (not to be confused with the hand-numbered "Exhibit" stamps Mr. Smith stuck to some attachments.)

Mr. Smith failed to include the "Site Agreement", which is an integral part of the "Settlement Agreement."

Mr. Smith also attached to his letter to Mr. Sanchez an altered version of the "Deed Notice" instrument prepared by McKesson Corporation employee Jean Mescher and sent to the Arkwood owner for signature and recording.

The version attached to Mr. Smith's letter omits the words "Signature" and "Jean A. Mescher" under "Prepared by" on page one of six, which words appeared in the version originally presented to the Arkwood owner by Ms. Mescher.

I attach here a scan of the original version of that "Deed Notice" instrument prepared by Jean Mescher and presented to the Arkwood owner, including the March 26, 2010 cover letter in which Ms. Mescher asserts:

"Pursuant to the Record of Decision (ROD) for the Arkwood Site, the USEPA is requesting that a Deed Notice be completed for the Site. The purpose of the deed notice is to ensure that the site remains protective of human health and the environment. The Deed Notice is enclosed for your completion."

In my opinion, Ms. Mescher appears to represent by the above statement that her version of the "Deed Notice" was an instrument originating with or approved by "USEPA."

In Ms. Mescher's version of the "Deed Notice" – which notably does not address the exclusion of residential use at Arkwood – there are onerous new requirements placed upon the Arkwood owner which are not, to my understanding, required by either EPA or the Record of Decision.

These new requirements would have made it much more burdensome for the Arkwood owner to continue as owner.

For example, if the Arkwood owner had executed on the Mescher "Deed Notice," the owner (and subsequent owners) presumably would have been bound to the following provisions:

"...providing routine inspection and maintenance for at least 30 years following the completion of remediation."

"...maintain all engineering controls at the Property and certify to the USEPA on an annual basis that the remedial action of which each engineering control is part remains protective of the human health and safety and of the environment."

"Implement any actions that are necessary to correct, mitigate, or abate each problem related to the protectiveness of the remedial action for the Site;"

It is my understanding that these provisions are part of McKesson Corporation's legal duties for "Long-Term Stewardship" as Responsible Party at Arkwood and that these duties cannot legally be shifted to any other entity.

In light of the above, as part of the effort to return Arkwood and adjacent lands to appropriate productive use, and within the context of CERCLA and the "Brownfield Amendments" as addressed in EPA's "Revitalization Handbook" (May 2008), I request assistance from EPA in clarifying the duties, responsibilities and obligations of:

- 1) the current owner of the Arkwood site;
- 2) current and future Contiguous Property Owners of lands adjacent to the Arkwood site;
- 3) any future owner of the Arkwood site who has come through EPA's revitalization program as a Bona Fide Prospective Purchaser, performed All Appropriate Inquiries and thereby obtained protection from liability under the "Brownfield Amendments"; and
- 4) McKesson Corporation as Responsible Party, with particular regard to "Long-Term Stewardship" as discussed in Part III Section A of the "Revitalization Handbook."

Thank you.

Sincerely,

Curt Grisham